CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: _____

Meeting Type: Regular _____

Meeting Date: Aug 14, 2014

Action Requested By: Planning

Agenda Type: Resolution

Subject Matter:

Web Site Hosting and Support Agreement

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a Web Site Hosting and Support Agreement with Red Sage Communications, Inc. on behalf of the City of Huntsville for www.BikeHuntsville.com

Note: If amendment, Please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

Cost is $300 for a 1 year period. This cost will be covered by federal grant funds.

Associated Cost:_____

Budgeted Item: _____

MAYOR RECOMMENDS OR CONCURS:_____

Department Head: _____

Date: 05 Apr 14

Originating Department: **Planning**

Council Meeting Date: **8/14/2014**

Department Contact: **Kimberly Gosa**

Phone # **427-5115**

Contract or Agreement: **Agreement**

Document Name: **Web Site Hosting and Support Agreement**

City Obligation Amount: *300*
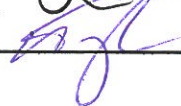
Total Project Budget:

Uncommitted Account Balance:
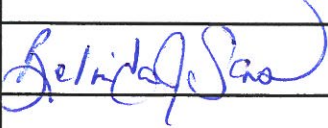
Account Number: **23-5265-0811-8404**

Procurement Agreements

Select...	Select...

Grant-Funded Agreements

Select...	Grant Name:

Department	Signature	Date
1) Originating		05 Aug 14
2) Legal		8-12-14
3) Finance		8/12
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		8/13/14
b. Clerk-Treasurer (Original & 2 copies)		

Revised 04/15/2011

RESOLUTION NO. 14-_____

      BE IT RESOLVED by the City Council of Huntsville, Alabama, that the Mayor be, and is hereby authorized to enter into an agreement with the Red Sage Communications, Inc. on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "WEB SITE HOSTING AND SUPPORT AGREEMENT" consisting of four(4)pages, and the date of August 14, 2014, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

          ADOPTED this the 14th day of August, 2014.

                                                _____
                                              President of the City Council of
                                              the City of Huntsville, Alabama

          APPROVED this the 14th day of August, 2014.

                                                _____
                                              Mayor of the City of Huntsville,
                                                Alabama

WEB SITE HOSTING AND SUPPORT AGREEMENT

This Agreement ("Agreement") is entered into on July 21, 2014, between Red Sage Communications, Inc. ("Developer"), with its principal place of business located at 111 2nd Ave. NE, Decatur, Alabama, and the City of Huntsville, Alabama (Client) with its principal place of business located at 308 Fountain Circle, Huntsville, Alabama 35801.

Client is engaging Developer as an independent contractor for the hosting and support of an existing web site as set forth herein.

THESE ARE THE TERMS OF OUR AGREEMENT

1. **SCOPE OF SERVICES.** Developer agrees to host a web site for Client in accordance with the following specifications.
   - 2 GB Ram
   - 2 CPU Cores
   - 20 GB 15k RPM Disk Space
   - Unlimited data transfer
   - Anycast DNS network with 4 managed DNS locations worldwide
   - 99% Uptime Guarantee
   - Daily site backups by host
   - Monthly site backups by Developer to Amazon S3 Cloud Server
   - 6 hours tech support each year by the developer per section 4E below.
   - Unlimited Bandwidth
   - Developer agrees to use all reasonable security best practices to insure website security and confidentiality.

2. **PRICE AND PAYMENT TERMS.** Client will pay Developer Three Hundred Dollars ($300.00) for hosting and support services for the 12-month hosting term: July 1, 2014 – June 30, 2015. Client will also pay Developer a fee of Seventy Dollars ($70.00) per hour for the implementation of content changes requested by Client.

   Payment is due 30 days after date of invoice. Developer reserves the right to remove web pages from viewing on the Internet if final payment is more than ten (10) days late. Any late payment will be subject to any costs of collection (including reasonable legal fees) and will bear interest at the rate of one (1) percent per month or fraction thereof until paid. If paying by check, Client agrees that should the bank return Client's check for any reason, a $30.00 fee will be assessed by Developer and Client will be responsible for payment in full upon notification by the bank and/or Developer. Client will be responsible for the payment of all federal, state, and local – sales, use, value added, excise, duty, and any other taxes assessed with respect to the services, other than taxes based on Developer's net income.

3. **AUTHORIZATION.** Client is engaging Developer as an independent contractor for the specific purpose of hosting a website on the Developer's web hosting service's server and providing on-going support.

4. **HOSTING.**

   4A. Term. This agreement shall be for a term of twelve (12) months the timeframe of which is specified in the "Price and Payment Terms".

   4B. Hosting Termination Policy. If Client terminates hosting services prior to the end of a 12-month term, the prepaid hosting fees for the remaining months in the annual period will not be refunded. Developer may terminate this agreement at any time and for any reason with 30 days notice (unless for reasons prohibited within the Acceptable use Policy provisions). If Developer terminates this agreement, the pro-rated portion of pre-paid fees attributed to services not yet rendered as of the termination date will be refunded. If this agreement is terminated for any reason with 30 days notice, Developer will not

be held liable because of the expiration or termination of hosting services on account of the loss of prospective profits, anticipated sales, goodwill or for any other reason resulting from such termination or expiration.

4C. Bandwidth, Storage and Email Usage. Client agrees that use of the hosting services will not exceed the bandwidth, storage and email usage limits specified in "Scope of Services" as excessive usage of system resources and/or bandwidth may detrimentally affect other sites on Developer's network. Any account found to be using excessive usage may be suspended or terminated without warning. When possible, advance warning will be provided, however if the excessive usage is deemed to be causing immediate harm to Developer's server or network, no warning will be provided. Acceptable arrangements must be made (such as removal of the offending script or transfer of the site to a dedicated server with more bandwidth) prior to the account being reinstated. Repeated excessive usage will result in the account being canceled without the possibility for reinstatement or refund. Chat scripts are not allowed on Developer's servers due to their known resource demands. Developer retains sole discretion over what constitutes excessive usage, repeated excessive usage, and/or acceptable arrangements.

4D. Reselling/Sharing Services. Hosting accounts, web space, bandwidth, site statistics, or any other service provided by Developer cannot under any circumstance be sold, resold, shared, assigned or given away. Each website requires its own hosting account. Any violations will result in the immediate cancellation of services rendered.

4E. Ongoing Security Patches and Supplemental Site Backup. Developer will actively monitor security patch releases and updates recommended for core Joomla software as well as all installed extensions. Developer will install ongoing releases of security patches to the core Joomla software and extensions as soon as possible after they are deemed stable after release. Developer will perform and store monthly site backups to Amazon S3 Cloud Servers independently of the hosting company backup processes.

5. **ACCEPTABLE USE POLICY:** Client's site may only be used for lawful purposes. Transmission, storage or displaying any information, data or other material in violation of any United States Federal, State, County or City law is strictly prohibited. This includes but is not limited to copyrighted materials for which you do not have the written permission from the copyright holder, pirated software, hacking/cracking related sites or software, Warez materials, copyrighted MP3 files, pornography or other adult related material, sexually related materials, or links to any of the above materials. Sites found to contain any prohibited materials will be canceled immediately without warning and will not be eligible for any refund. Developer retains the right to make the final decision as to what constitutes a violation of this policy.

Spamming or sending Unsolicited Email of any type referencing sites on Developer's servers in any manner (originator, intermediary, destination or reply-to address) is strictly prohibited and Client's account may be terminated without notice or refund in such situations. In addition, Developer retains the right to impose a minimum $100 fee for each reported unsolicited email. Additional charges may apply for administrative work or any penalties incurred by Developer or its up-line providers for abusing our services. Sending mail out to opt-out mailing lists or any other databases containing contact persons who did not specifically solicit mail from Client is strictly prohibited. This includes requiring a site user to specifically request to be removed from mailing lists during sign up forms. Any violation of this policy may result in the Developer's sole discretion in the immediate termination of your hosting and/or email service without notice and without issuing refunds.

6. **CONFIDENTIAL INFORMATION:** All information relating to Client that is known to be confidential or proprietary, or which is clearly marked as such, will be held in confidence by Developer and will not be disclosed or used by Developer except to the extent that such disclosure or use is reasonably necessary to the performance of Development Services or as required and permitted by applicable law or legal process. All information relating to Developer that is known to be confidential or proprietary or which is clearly marked as such will be held in confidence by Client and will not be disclosed or used by Client

except to the extent that such disclosure or use is reasonably necessary to the performance of Development Services or as required and permitted by applicable law or legal process.

7. **PRIVACY.** Developer will not access or review the contents of any email or similarly stored electronic communications except as required and permitted by applicable law or legal process. To comply with applicable laws and lawful governmental requests, to protect Developer's systems and customers, or to ensure the integrity and operation of Developer's business and systems, Developer may access and disclose any information it considers necessary or appropriate, including without limitation, user profile information (i.e., name, email address, etc.), IP addressing and traffic information, usage history, and content residing on Developer's systems and servers.

8. **WARRANTIES AND LIABILITY.** Neither Developer nor any of its employees or agents, warrants that the functions contained in the completed web site will meet the client's requirements, or be uninterrupted or error-free, and Develop expressly disclaims any such warranty express or implied, as well as any warranty of merchantability, fitness for a particular purpose, and non-infringement. The entire risk as to the quality and performance of the web site is with Client. In no event will Developer nor any of its employees or agents be liable to Client or any third party for any damages, including, but not limited to, service interruptions caused by Acts of God, the Hosting Service or any other circumstances beyond Developer's reasonable control, any lost profits, lost savings or other incidental, consequential, punitive, or special damages arising out of the operation of or inability to operate this web site, failure of any service provider, of any telecommunications carrier, of the Internet backbone, of any Internet servers, Client's or Client's site visitor's computer or Internet software, even if Developer has been advised of the possibility of such damages. In no event shall Developer or its suppliers be held liable for unauthorized access to, or alteration, theft or destruction of information distributed or made available for distribution via the services through accident, fraudulent means or devices. Client agrees and acknowledges that Developer exercises no control over, and accepts no responsibility for, the content of the information passing through Developer's host computers, network hubs, and points of presence, or the internet.

9. **INDEMNIFICATION.** To the extent provided by Alabama law of municipal liability, Client agrees that it shall defend, indemnify, save and hold the Developer and its employees, harmless from any and all demands, liabilities, losses, costs and claims, including reasonable attorney's fees associated with Developer's development and hosting of Client's web site.

10. **NO WAIVER.** Developer's failure to enforce the strict performance of any provision of this Agreement will not constitute a waiver of Developer's right to subsequently enforce such provision or other provisions contained in either.

11. **RIGHTS UPON TERMINATION OF AGREEMENT.** Developer shall transfer, assign and make available to Client all property and materials in Developer's possession or subject to Developer's control that are the property of Client, subject to payment in full of amounts due pursuant to this Agreement in a timely manner.

In the event Client terminates this contract by registered letter and requests site files, Developer's time to gather and provide these files shall be billed at Developer's standard hourly rate.

12. **LITIGATION.** This agreement shall be governed by the laws of the State of Alabama. Any disputes arising from this contract will be litigated or arbitrated solely in Madison County, Alabama, and the parties hereby now and forever agree to the venue and jurisdiction of the State or Federal Courts in Madison County and hereby waive any and all arguments to the contrary. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement and services provided herein, the prevailing party in such action shall be entitled to all reasonable costs, including attorney fees. In the event that any term or provision of this Agreement is held by a court of competent jurisdiction to be illegal, unenforceable or invalid in whole or in part for any reason, the remaining provisions of this Agreement shall remain in full force and effect.

13. SOLE AGREEMENT. This agreement constitute the sole agreement between Developer and Client regarding this Web Design Project. Any additional work not specified in this contract or any other amendment or modification to this contract must be authorized by a written request signed by both Client and Developer.

IN WITNESS WHEREOF, The undersigned hereby agree to the terms, conditions and stipulations of this agreement and is authorized to do so on behalf of his or her organization or business. Both parties acknowledge that they have not been induced to enter into this Agreement by any representations or promises not specifically stated herein.

AGREED TO:

BY CLIENT:
City of Huntsville

Signature: _____

Print Name: _____

Title: _____

Date: _____

BY DEVELOPER:
Red Sage Communications, Inc.

Signature: _____

Print Name: Ellen Didier

Title: President

Date: 7/21/14